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In the
SUPREME COURT OF THE UNITED STATES
October Term, 1996

(2)

No. 96-317

In the matter of WILLIAM C. McCLAIN,
Judge of the Vigo County Court

On Petition for a Writ of Certiorari to the
Indiana Supreme Court

BRIEF IN OPPOSITION OF THE INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

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Questions Presented

The Indiana Supreme Court removed from office and disbarred William C. McClain, who had been a county court judge, because McClain engaged in a pattern of harassment and abuse against a court employee.

1. States have a important interest in maintaining the integrity of their judiciaries. In this case, the record supports the determination that the judge participated in a pattern of harassment of a court employee and her family, culminating in sending her a used condom containing the judge's semen. Should this Court grant certiorari from the Indiana Supreme Court's removal of the judge from office?

2. A three-judge hearing panel made a general finding that McClain had a good reputation for veracity. Reviewing the record of the disciplinary proceeding before the hearing panel, the Indiana Supreme Court found that McClain had lied in a particular instance. Does the Indiana Supreme Court's finding deny the judge due process?

3. The penalty assessed by the Indiana Supreme Court was based in part on the fact that McClain lied to the hearing panel and sought to frustrate the disciplinary process by delaying the medical test that proved that his semen was in the condom he sent to the employee he harassed. Does the Supreme Court's use of these factors in determining the appropriate penalty violate due process?

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BRIEF IN OPPOSITION OF THE INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

Statement of the Case

William C. McClain was removed as a state trial judge and suspended from the practice of law for harassing a court employee. McClain was charged with willful misconduct in office by engaging in a pattern of harassment and abuse against the employee, her family and boyfriend. 3a.

Masters' Proceeding

Pursuant to charges filed by the Indiana Judicial Qualifications Commission, the Indiana Supreme Court

appointed three masters to hear evidence. Their findings are summarized in the following paragraphs.

McClain gave the employee, L.H., two $100 monetary gifts. 27a. He gave no similar gifts to any other employee. 6a. McClain once asked her to have dinner with him, and he told her she would fit in well with his family. *Id.* L.H. and her boyfriend observed McClain sitting in his truck outside her apartment. 27a.

Someone made efforts to break up L.H.'s relationship with her boyfriend. Someone made an anonymous call to L.H. telling her that her boyfriend didn't love her. 28a. L.H.'s father received two similar calls. *Id.* These calls contained specific details about L.H. that McClain knew, although others might have known some of the details as well. 30a.

In April 1991, L.H. received an anonymous letter that contained a used condom and made vulgar accusations against her boyfriend. *Id.* The letter suggested that L.H. leave her boyfriend.

The used condom mailed to L.H. contained McClain's semen, as shown by a DNA test ordered by the Indiana Supreme Court and confirmed by an independent test McClain obtained. *Id.* At the hearing before the masters, McClain's cousin testified that *he* had obtained the condom from a waste basket and mailed it to L.H. 30a. The masters did not decide whether the cousin's account was truthful.

After hearing evidence, the masters concluded that the Indiana Commission on Judicial Qualifications had failed to prove by clear and convincing evidence that McClain had harassed L.H. 31a. The Commission filed

objections to the masters' report, McClain replied to the objections. The Indiana Supreme Court ruled *de novo* on the objections. 4a.

Indiana Supreme Court Proceeding

The Indiana Supreme Court adopted all fifty-seven of the masters' findings of fact, but not their conclusions of law. The Indiana Supreme Court found clear and convincing evidence in the record that McClain participated in the harassment of L.H. and her family. 5a. It specifically found clear and convincing evidence that McClain had participated in sending the harassing phone calls and letter to L.H. 19a. The court found this conduct amounted to judicial misconduct and violated Indiana Judicial Canons 1 and 2. *Id.*

The Indiana Supreme Court found that McClain's gifts to L.H., his dinner invitation and other remarks to her went beyond the usual employer-employee relationship. 6a.

The Indiana Supreme Court further noted that McClain denied sitting in his truck outside L.H.'s apartment. 7a. McClain's denial was contradicted not only by L.H. and her boyfriend, who saw him there, but by two other Vigo County judges. The two judges testified that McClain told them he had been in the area to investigate an anonymous tip of "trouble." 7a. The Indiana Supreme Court concluded that McClain "concocted" his story about the anonymous tip to justify his presence outside L.H.'s apartment. 8a. McClain's lies to fellow judges were designed to hide his interest in L.H., the court determined. 9a.

Nor did the Indiana Supreme Court believe McClain's "incredible tale" that his cousin mailed the

condom and harassing letter to L.H. 16a. The court summarized the story as follows: "in furtherance of a plot to get even with [L.H.'s boyfriend] for some old grudges, McQueary [McClain's cousin] took a used condom out of his wastebasket which he thought to be his own but which had actually been put there by [McClain], who was using McQueary's house for sexual liaisons while McQueary was on a trip to Tulsa; McQueary then put the condom in a sandwich bag, delivered it to a now deceased friend, who then had an unnamed female write an obscene note purportedly dictated by McQueary, after which the whole disgusting package was put together and sent to McQueary's friend, [L.H.], with the dead and unknown co-conspirators thinking it was all a practical joke." 15a.

McQueary did not come forward until McClain was required to take a blood test to prove the origin of the condom, and all potential corroborating witnesses for McQueary's story are conveniently unavailable. *Id.* Also, despite his kinship and close friendship with McClain, McQueary purports to have kept completely quiet for two years about his central role in the episode that put McClain's career in jeopardy. 16a. The Indiana Supreme Court found "this eleventh hour tale of vengeance and coincidence to be unbelievable . . ." 17a.

The Indiana Supreme Court removed McClain from his judicial office and suspended his law license for a period no less than two years. 20a. The court's sanction was based in part on McClain's obstructive conduct, including the creation of a false defense to the charges against him. The court found that McClain's false defense reflected directly on McClain's integrity, "the essence of the judicial vocation." 20a.

REASONS FOR DENYING THE WRIT

I.

McClain has shown no significant federal issue or conflict between courts meriting this Court's intervention in the State's judicial disciplinary process.

Nothing about this case makes it worthy of this Court's consideration. McClain has identified no conflict -- and there is none -- between the Indiana Supreme Court and any other court on any significant federal issue. *See* Sup. Ct. R. 10.1(b). Indeed, the sanction is wholly consistent with disciplinary actions taken in other jurisdictions. Nor does the decision below present a noteworthy federal question that warrants review by this Court. *See* Sup. Ct. R. 10.1(c).

In fact, federalism principles counsel against certiorari in this case because judicial discipline is an important state function with which federal courts should interfere in only the rarest of cases. *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432-33 (1982). In Indiana, judicial discipline is committed solely to the Supreme Court by the State Constitution, showing its significance. Ind. Const. art. 7, § 4. This Court should permit Indiana to protect its citizens from misconduct by state court judges without interference absent a very substantial federal constitutional issue.

II.

The masters did not find that McClain's testimony in this case was credible, so the Indiana Supreme Court's determination that he lied presents no federal question.

Contrary to McClain's characterization, the Indiana Supreme Court did not disregard the masters' credibility

findings, so this case presents no federal issue as to that claim. Rather, the Indiana Supreme Court adopted the masters' factual findings, including their findings on credibility, and determined that the record showed clear and convincing evidence of judicial misconduct as a matter of law.

The Indiana Supreme Court merely decided that all of the facts in the record constituted clear and convincing evidence of judicial misconduct. The court did not reject the masters' credibility findings. The masters found that McClain had a good *general reputation* for truthfulness. They did not find that McClain (or McQueary) told the truth *in this case*.

As the Indiana Supreme Court wrote: "The Masters found [McClain] had a reputation in the community for truthfulness and honesty. However, this does not preclude a finding of specific instances of dishonesty in his testimony, and we find that [McClain] was untruthful concerning his conduct and relationship with [L.H.]." 9a (citation omitted). This determination is an application of Indiana law, and it raises no federal question.

Thus, even if this Court were to hold that a reviewing body could not alter the factual findings of the fact-finder who heard testimony, such a holding would not change the outcome of this case. *Cf. United States v. Raddatz*, 447 U.S. 667, 673 (1980) (under Fed. R. Civ. P. 72, district courts' review of magistrates' findings is *de novo,* but district courts need not re-hear testimony). The Indiana Supreme Court did not reject the masters' credibility finding about McClain, which was only as to his general reputation for truthfulness, so the question posed by McClain is not presented by this case.

III.

The Constitution does not prohibit consideration of specific circumstances in fashioning a penalty, so the Indiana Supreme Court's reliance on McClain's fabrications and delays is proper in establishing his penalty.

Nothing in the Constitution prohibited the Indiana Supreme Court from considering the specific circumstances of McClain's case, including his fabricated defense, in sanctioning him. It is well-established that a court may consider the specific circumstances of a case and an offender in determining what penalty is proper. *Wisconsin v. Mitchell*, 508 U.S. 476 (1993); *Wasman v. United States*, 468 U.S. 559, 563 (1984).

In this case, the Indiana Supreme Court based its sanction in part on McClain's obstructive conduct, including his resistance to blood testing and his concoction of a false defense, because these matters reflected adversely on the integrity of the judiciary. The Indiana Supreme Court noted that attorneys and judges have affirmative obligations under applicable disciplinary rules to cooperate with investigations. The court properly reasoned that a judge should be held to a higher standard than an average citizen and that his attempts to obstruct the judicial disciplinary process reflected poorly on the integrity of the judiciary.

McClain had an independent duty to cooperate with the Judicial Qualification Commission's investigation. *See* Ind. R. Prof. Conduct 8.1. An attorney's failure to cooperate in the disciplinary process is a separate offense under the rules, and it may lead to additional sanctions. *Committee on Professional Ethics v. Horn*, 379 N.W.2d 6, 9 (Iowa 1985); *In re Staab*, 719 S.W.2d 780, 783-84 (Mo.

1986). Even in the criminal context, cooperation may favorably affect a sentence. *Wade v. United States*, 504 U.S. 181,185 (1992); 18 U.S.C. § 3553(e); Sentencing Guidelines §§ 3E1.1(a), 5K1.1.

The Indiana Supreme Court also based its sanction in part on McClain's lies about how the condom came to be transmitted to L.H. McClain's argument depends on his contention that he did not lie, although the Indiana Supreme Court found that he did. 15a-16a. In essence, McClain now asks this Court to re-try the factual accuracy of his defense. Petition at 13.

Providing false evidence to disciplinary authorities violates rules of professional conduct and justifies discipline. *See, e.g., In re Kaine*, 424 N.W.2d 64, 65 (Minn. 1988); *Office of Disciplinary Counsel v. Wittmaack*, 513 Pa. 609, 522 A.2d 522, 530-31 (1987); *Matter of Gantt*, 286 S.C. 550, 335 S.E.2d 241, 242 (1985); *People v. Gibbons*, 685 P.2d 168, 175 (Colo. 1984). Even in the criminal context, courts may base sanctions on the defendant's specific conduct during the proceeding. When a defendant lies at his trial, a court is justified in enhancing his sentence. *United States v. Dunnington*, 507 U.S. 87 (1993); United States Sentencing Comm'n, Sentencing Guidelines Manual § 3C1.1 (1995).

Nor did the Indiana Supreme Court penalize him for asserting his Fourth Amendment right, assuming a judge has a valid Fourth amendment claim when asked to submit to medical testing in a judicial discipline proceeding. In assessing its sanction, the Indiana Supreme Court noted McClain's "obstructive and uncooperative posture toward the Commission's investigation." 20a. These delaying tactics consisted not of McClain's assertion of his rights, but rather of McClain's on-again-off-again agreement to

take the blood test and his lengthy delay in providing the Commission with the written results of the DNA test performed by his own expert. 11a. McClain's refusal to timely provide the results of his independent DNA tests on the condom in discovery would, by itself, support the Indiana Supreme Court's finding of lack of cooperation.

In this case, the Indiana Supreme Court acted well within established national practice when it shaped McClain's sanction partly on his false story to the Commission and his attempts to obstruct the investigation by delaying his blood test and failing to provide his independent DNA test results in discovery. It did not sanction him for asserting his constitutional rights, and the Court should not grant certiorari to review a question not presented by the case. His petition for certiorari presents no issue worthy of review.

Conclusion

This Court should deny the petition for writ of certiorari.

Respectfully submitted,

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